Stroehmann Bakeries, Inc. *and* Bakery, Confectionery and Tobacco Workers Local Union No. 116. Case 3–CA–18428

September 11, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND TRUESDALE

On November 17, 1994, Administrative Law Judge Marvin Roth issued the attached decision. The Respondent filed exceptions and a supporting brief and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Stroehmann Bakeries, Inc., Syracuse, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

Doren G. Goldstone, Esq., for the General Counsel.
Edward S. Mazurek, Esq., of Philadelphia, Pennsylvania, for the Respondent.

DECISION

STATEMENT OF THE CASE

MARVIN ROTH, Administrative Law Judge. This case was heard at Syracuse, New York, on August 1, 2, and 3, 1994. The charge and amended charge were filed respectively on March 3 and June 20, 1994, by Bakery, Confectionery and Tobacco Workers Local Union No. 116 (the Union). The amended complaint, which issued on July 1, 1994, and was amended at the hearing, alleges that Stroehmann Bakeries, Inc. (the Company or Respondent) violated Section 8(a)(1) and (5) of the National Labor Relations Act (the Act). The gravamen of the complaint is that the Company allegedly: (1) failed and refused to furnish the Union with requested information relevant and necessary to the Union's performance of its duties as collective-bargaining representative of an appropriate unit; (2) solicited employees to decertify the Union, promised them benefits if they did so, and bypassed the Union and dealt directly with unit employees by soliciting them to agree to terms and conditions of employment which would be implemented after decertification of the Union; and (3) unilaterally eliminated all unit positions and reassigned work to nonunit employees and to supervisors, without prior notice to the Union and without affording the Union an opportunity to bargain concerning such action and its effects. The Company by its answer denies the commission of the alleged unfair labor practices.

All parties were afforded full opportunity to participate, to present relevant evidence, to argue orally, and to file briefs. The General Counsel and the Company each filed a brief. On the entire record,[1] and from my observation of the demeanor of the witnesses, and having considered the arguments of counsel and the briefs submitted by the parties, I make the following

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

The Company, a corporation with offices and places of business in New York State and Pennsylvania, including a facility in Syracuse, New York, is engaged in the manufacture and wholesale distribution of bakery products. In the operation of its business, the Company annually purchases and receives at its Syracuse facility goods valued in excess of $50,000 directly from points outside the State of New York. I find, as the Company admits, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION AND BARGAINING UNIT INVOLVED

The Union is a labor organization within the meaning of Section 2(5) of the Act. It is undisputed that at least until February 11, 1994, the Union was the designated exclusive collective-bargaining representative of the Company's employees in the following appropriate unit:

> All shipping and sanitation employees at the Company's Syracuse, New York facility, excluding all office clerical employees, foremen, non-shipping employees, and supervisors as defined in the Act.

The most recent collective-bargaining contract between the Company and the Union covering the unit employees was effective by its terms from November 2, 1990, to November 1, 1993.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

1. The Company's operations, and the work of the unit employees prior to February 11, 1994

George Weston Limited, a Canadian conglomerate, conducts food processing, food distribution, and resource operations in Canada and the United States. Weston Foods, a subsidiary of George Weston Limited, is engaged in the production, processing, and distribution of bakery, dairy, and confectionery food products. The Company, based in the

[1] Certain errors in the official transcript are noted and corrected.

United States, is a subsidiary of Weston Foods. As indicated, the Company is engaged in the manufacture and distribution of bakery products.

The Company operates six bakeries, including a bakery at Sayre, Pennsylvania. The Company's production and shipping employees at Sayre are not represented by a labor organization.

Prior to February 11, 1994, the Company shipped bakery products from Sayre, Pennsylvania, to its Syracuse facility, both for distribution in the Syracuse area and for transshipment throughout the upstate New York region. The Company maintained, and still maintains, 14 ''depots'' for distribution in this region. Thirteen, including Syracuse, are located in upstate New York, and one in adjacent Massachusetts.

Transport truckdrivers represented by the Teamsters union, delivered in bulk, bakery products destined for the upstate New York region (known as the Central New York Segment), to the Syracuse facility. There unit employees (shippers) unloaded the trucks. They separated, and sorted into blocks, orders destined for delivery in the Syracuse area by the facility's approximately 28 route salesmen, who loaded their respective shipments, which they delivered in step vans. The route salesmen, like the Company's transport truckdrivers, are represented by the Teamsters union. The unit shippers sorted and reloaded onto the transport trucks loads destined for the other depots. When the Syracuse route salesmen completed their deliveries, they returned to the facility with baskets in which the products were packed. The shippers loaded the empty baskets onto a transport truck for return to Sayre.

The Syracuse facility had 10 unit employees. Nine were classified as shippers. Eight were full-time employees and one worked part time. One of the shippers checked off items returned by the route salesmen as stale. The Company had a thrift store at the Syracuse facility. The employee in charge of the store (not a unit employee) brought those items into the store for retail sale.

The 10th unit employee was classified as a sanitor. The sanitor, who worked a night shift (normally midnight to 8 a.m.), was responsible for general maintenance and cleaning of the facility building. David Cleavenger, the sanitor, was also unit union steward.

2. Negotiations for a new contract, the Union's requests for information, and the Company's responses

Ronald Schmid is the Union's business agent, and in that capacity, its principal officer. Antonio Leta is the Company's general manager for the Central New York Segment. By letter dated August 6, 1993, Schmid gave Leta notice of the Union's desire to negotiate a successor agreement to the 1990–1993 contract.[2]

Kenneth Spehalski was at all times material here company director of industrial relations and, in that capacity, its chief contract negotiator. On September 17, Spehalski contacted Schmid and suggested that they meet privately in advance of formal negotiations. Schmid declined. Spehalski proposed three dates in October for negotiations. Schmid replied that he or Union International Representative Robert Kerr would not be available on those dates. They eventually agreed to meet in negotiations on November 16.

On November 16, the parties met in their only negotiating session. Schmid, Kerr, and Union Steward Cleavenger were present for the Union. Leta and Spehalski were present for the Company. Schmid was nominally the Union's chief negotiator but in fact Kerr acted as chief union spokesman, and did most of the talking for the union side.[3] Schmid and Kerr prepared, and brought with them, proposed contract changes, which included increased wages and benefits. They did so in anticipation that the negotiations would be as easy as prior negotiations, in which they routinely obtained such contract improvements.

The General Counsel presented testimony by Schmid concerning the November 16 meeting. The Company presented testimony by Leta and Spehalski. Over the objections of the General Counsel, the Company questioned General Counsel witness Cleavenger concerning the meeting, and presented in evidence a deposition taken of Kerr in the 10(j) proceeding, in which he testified about the meeting. Kerr was not presented as a witness in the present hearing.

The witnesses were substantially, but not entirely, in agreement as to what was said at the meeting. I find the testimony of Leta to be the most accurate and complete concerning the meeting. Unless otherwise indicated, I have credited his testimony in this regard.

The meeting lasted about 1 hour. Spehalski began the discussion by presenting what he described as ''bad news.'' He said that the Company lost $12 million in 1992, was projected to lose $16 million in 1993, but the actual loss appeared to be closer to $20 million. Spehalski read aloud excerpts from George Weston Limited's annual report. The excerpts stated in sum that: the conglomerate's bakery operations, including the Company, reported operating losses for the first time, and that the causes were a combination of factors, specifically, falling retail bread prices in a deflationary market, rising flour prices, and collapsed sales of hotdog and hamburger rolls resulting from unusually cold summer weather. The report described these factors as ''a disastrous combination for profitability.''

Spehalski added that the Syracuse operation lost $150,000 in each of the years 1992 and 1993. Leta testified that he understood the losses were much greater, but he did not correct Spehalski's statement.

Spehalski said that the Company could have gone out of business, but that Weston wanted to remain in the baking business in the United States, and remain competitive. He said the Company could not go on without a parent company being willing to fund its losses. Spehalski and Leta testified, in sum, that Spehalski said he could be taking a position of inability to pay, but was not because of Weston's ''deep pockets.''

Schmid testified that he did not hear Spehalski say that he was not taking a position of inability to pay. In his 10(j) proceeding deposition however, Schmid stated that Spehalski may have referred to Weston's deep pockets. Kerr, in his deposition, also stated that he did not recall Spehalski say that he was not claiming inability to pay. Cleavenger testified that one of the company negotiators, probably Spehalski,

[2] All dates herein are for the period of August 1, 1993, through July 31, 1994, unless otherwise indicated.

[3] Cleavenger testified that Kerr was the chief union spokesman, as did Schmid, in the 10(j) injunction proceeding in this case.

definitely used the words ''inability to pay.'' No witness testified that Spehalski expressly pleaded inability to pay. Consequently, if as indicated by Schmid and Cleavenger, Spehalski used the phrase ''inability to pay,'' and referred to Weston's deep pockets, the only explanation for the context in which those words were used is that provided by Spehalski and Leta. I credit their testimony concerning Spehalski's statement.

Spehalski asserted that the Company had to run an efficient operation in order to survive. He said that the Company needed to change its operations, specifically, to eliminate the unit and relocate its work to Sayre. Spehalski and Leta explained what they regarded as inefficiencies in the present operation. They asserted that unit wages were too high, and that the system of ''double handling,'' i.e., unloading and reloading at Syracuse, was wasteful and inefficient.

International Union Representative Kerr expressed surprise. He said the Union wanted increased wages and benefits. He said he understood the difficulty in the industry and wanted to help, but could only go so far. He said that ''if we're part of the problem, we can perhaps absorb some of the pain.'' Kerr asked if there was anything they could do to save any jobs.

At this point, the parties caucused. When they returned to the meeting, Spehalski said they could save three or four jobs, provided that the Union agreed to certain concessions. Under this arrangement, the remaining shippers would continue to service the 28 local routes. Shipments to the other depots however would go directly from Sayre, eliminating the ''double handling.'' Spehalski asserted that the Company also needed flexibility and changes in work rules, including authority to utilize 4-day workweeks. With regard to the sanitor, Leta asserted that the Company could contract out the cleaning and maintenance work at a cost of less than half of what it paid Cleavenger and, therefore, the sanitor's pay should be reduced. The company representatives said they needed concessions resulting in a saving of about $150,000 annually.

Kerr asked Company Director of Industrial Relations Spehalski to present a comprehensive contract proposal, and Spehalski agreed to do so. The Union did not present its own written proposal, in light of Spehalski's presentation. Leta asked if he could speak to the unit employees in order to explain the Company's position. Schmid agreed, with the understanding that Union Steward Cleavenger would be present. The Union did not, at this time or any subsequent time, specifically request a copy of the Weston annual report from which Spehalski read.[4]

General Manager Leta testified in sum as follows: In order to prepare the Company's wage proposal after the November 16 meeting, he canvassed other employers, including both union and nonunion operations, to determine what they paid their shipping employees. The Company also monitors weekly payroll and overtime hours. Leta receives weekly reports of such information, including comparisons of the statistics for all departments under his jurisdiction. Spehalski testified in sum as follows: his assertions concerning the excessive cost of shipping services, including double handling at Syracuse, were based on information obtained from other companies providing similar services. With respect to the sanitation service, Leta received a cost quotation from an outside contractor. The information about other companies was contained in a newspaper article which Leta gave him. Leta however compiled wage rate information for shippers in the area serviced by the Syracuse facility. He did not recall that Leta had notes concerning his findings. In the 10(j) proceeding however, Spehalski testified that he believed Leta had notes concerning the wage survey. Spehalski also testified that he communicated with Leta on the wage information by telephone, fax, and mail.

By letter dated November 18 and received November 22, the Company presented its contract ''proposal regarding the realignment of [unit] work.'' The proposal contemplated, although it did not expressly provide for, a maximum of four unit employees. The proposal provided in sum as follows. There would be a 4-year contract. The classifications of shipper and stale checker would be eliminated and replaced by classifications of product selector and part-time product selector, who would service the 28 Syracuse area routes. The classification of sanitor would be eliminated when vacated by the incumbent employee. Wage rates would be reduced by $2 per hour for the product selectors (from the former shipper rate) and by nearly one-half ($6.20 per hour) for new hires and the sanitor. Restrictions would be placed on overtime, with authorization for the Company to establish a 4-day/10-hour work schedule. The Company also proposed various other changes, including certain restrictions on eligibility for health care coverage and retiree life insurance, increased company contribution to its 401(k) plan, and a drug testing program.

Spehalski proposed a bargaining meeting on November 29 or 30. By faxed letter dated November 22, Schmid replied that ''because of the extensive changes proposed, and the shortness of time,'' the Union would not be able to meet on the proposed dates. Schmid stated that after the Union ''evaluated and researched the company proposals,'' they would contact Spehalski to set a meeting date. Spehalski subsequently proposed meeting on December 8 or 10. By faxed letter dated December 6, Schmid responded that the Union was still evaluating the Company's proposals, and could not meet on December 8 or 10. Schmid stated that after evaluating the proposals, the Union would forward ''extensive'' requests for information.

Spehalski promptly replied (by letter dated December 6) to Schmid's December 6 letter. Spehalski suggested that the Union was avoiding bargaining. He proposed 13 dates for bargaining, during the period from December 20 through January 21. Spehalski declared that ''the Company's willingness to bargain expires on February 1, 1994, at which time we will implement operational changes based on business considerations.''

The Union subsequently submitted written requests for information. Although nominally from Union Business Agent Schmid, the requests were prepared by International Union Representative Kerr.

[4] Spehalski testified that he thought Kerr requested the report, and that he (Spehalski) agreed to provide it, but he could not recall when he sent the report. Kerr, in his deposition, stated that he intended to request the report, but did not do so at the November 16 meeting. In light of Kerr's admission, and the absence of any evidence of communications between the parties concerning this matter after November 16, I find that the Union never requested a copy of the report, although it may have been furnished in connection with the Region's investigation of the unfair labor practice charges.

By letter dated December 9, the Union submitted a request for information regarding the Company's drug testing proposal. By letter dated December 22, the Company responded to that request. The General Counsel does not contend that the Company unlawfully failed or refused to furnish any of the requested information.

The Union's second and third requests for information are at issue in this case. By letter dated December 10, the Union stated as follows:

> This serves as the unions request for information that we deem relevant and necessary to assess yor [sic] claim of financial hardship and inability to pay wage increases for the members of Local #116.
>
> As such, please provide the following information:
>
> 1. Identify which companies Stroehmann's considers to be its primary competitors both locally and on a national level.
>
> 2. Describe and provide copies of any and all production or other management reports, studies or analyses which the company utilzes [sic] on a regular basis in reaching decisions on wages, manpower levels, pricing structures for its products. Provide such information for the past three years to the extent such information is retained.
>
> 3. Provide the following information for a period of at least three years from the date of this request.
>
> (i) List of customers or sales accounts
> (ii) Copy of accounts payable journals or other form of such record keeping at the company
> (iii) Copy of supplier invoices or other forms of such record keeping at the company
> (iv) Copy of general ledger or other form of such record keeping at the company
> (v) Chart of company accounts or other form of such record keeping
> (vi) Detailed listing of all computer records or other documents or reporting functions maintained by the company to track profit/loss status, profit to sales ratio, equity to debt ratio
>
> 4. Provide a listing of all company employees, including non-bargaining unit and management personnel with the following information:
>
> (i) Name
> (ii) Sex
> (iii) Classification or title
> (iv) Hourly wage or salary
> (v) Benefits provided, other than those set out in the Local 116 collective bargaining agreement
> (vi) Salary or wage increases for the past three years
> (vii) Date of initial service with Stroehmann's and dates and titels [sic] of promotions/demotions
>
> 5. Provide a copy of any and all annual reports, auditor's or accountant's annual and quarterly statements or business summary reports produced by the company for the past three years.
>
> 6. Copy of all filings with the New York Seretary [sic] of State, Corporation's Office, including but not limited to official corporation registration statements and financing statements.
>
> 7. For the last three years provide the provide the [sic] following:
>
> (i) Copy of financial statement and/or balance sheets
> (ii) Copy of any applications for loans, lines of credit, mortgages or other form of borrowing
> (iii) Copy of any liens, judgments or creditors' letters regarding outstanding unpaid bills
> (iv) Copy of all reports, statements or analyses by an auditor or Certified Public Accountant
>
> 8. To the extent not already provided in response to the above, for the company's current Fiscal Year, provide:
>
> (i) Copy of balance sheets or statements reflecting asset/liability statements
> (ii) Year to Date General Ledger
> (iii) Schedules of expenses, cash flow or other notes for financial statements
>
> To the extent the company has other financial documents which would assist the Union in assessing the company's claim of inability to pay, please prepare and provide such documents.
>
> To the extent the answers or documents required in response to any of the questions above might involve disclosure of bona fide trade secrets, the Union request that such responses be identified with particularity so that an agreement can be reached to maintain the integrity of such trade secrets.
>
> If you have any questions about the above, please contact me.

Although International Representative Kerr prepared the Union's requests for information, Union Business Agent Schmid was the only witness presented by the General Counsel to testify concerning the reason or reasons for the Union's information requests. Schmid testified as follows with respect to the December 10 request:

> The letter was being sent at this time to Stroehmann's because of the bargaining session we had on the 16th and all the talk there was of their financial hardship and the loss of money and their wanting to cut wages and wanting to change the overtime over eight hours and, et cetera, that it was necessary to find out that if indeed they did have a financial hardship. And the way to find this out was to send them this type of a request for information, which as Mr. Kerr told me, is a standard accounting practice that the International uses.

Schmid added that he and Kerr concluded that the Company made a claim of financial hardship and inability to pay.

In response to a leading question from the General Counsel, Schmid testified that his conclusions regarding the Company's position were ''reinforced'' by the July 1993 issue of a company magazine.

Schmid however earlier testified that the Union's request for information was based on the Company's contract proposal and statements at the November 16 meeting, and not on any other company statements. Schmid testified that he did not know when he received or read the magazine.

With regard to item 1 in the Union's information request, Schmid testified in sum that the knew the identity of the Company's major competitors, but wanted the Company's opinion. Schmid admitted that the Syracuse facility does not provide distribution services outside the New York State area.

The magazine articles referred to in Schmid's testimony asserted in sum that the Company lost money in 1992 (for the reasons given by Spehalski on November 16), but that 1993 would be profitable. The articles asserted that the Company had to take action, the Company eliminated one corporate office, its bakeries were now more productive and provided better customer service, and manufacturing and administrative costs were lower. The articles however further asserted that the Company must improve in distribution, that costs brought down must be kept down, and that the Company would not close any more plants but would continue to make changes. The magazine quoted Company President Jim Fisher as saying that such changes meant doing with fewer people.

The General Counsel also presented in evidence an open letter from Company President Fisher to the Company's employees, dated December 10. Fisher referred to the fact that earlier in 1993, the Company had deferred its annual pay increase for salaried and office personnel ''because the company's results were unsatisfactory.'' Fisher asserted that the Company sustained major operating losses in 1992 and 1993, profitability had not improved, and that the situation was attributable to two problems. He stated that one problem, involving the Company's Hazelton plant, was being solved, but that the second problem was more difficult in that: ''We are being squeezed between rising costs and falling prices.'' Fisher asserted that: ''we cannot continue to operate as we have in the past. We simply cannot afford it.'' He exhorted the employees to work safely, build sales, and eliminate waste, but declared that: ''The intensive effort we must direct at cost inevitably means that we will have to find ways to meet consumer and customer needs with fewer people.'' Fisher announced a program of wage increases in 1994 for salaried and office personnel, in part conditioned on company profitability, ''in recognition of hard work and effort over the past year.'' Business Representative Schmid testified at one point that he received a copy of this letter in mid-December, and at another point, that he did not know when he received it.

By letter dated December 21, Industrial Relations Director Spehalski responded to the Union's information request. Spehalski denied that the Company made a claim of financial hardship and inability to pay wage increases, as asserted in the Union's December 10 letter. He declared that the basis of the Company's proposals was its desire to remain competitive in the baking industry in upstate New York, and that he never took the position of inability to pay. Spehalski asserted that he told the Union that the Company was unwilling to allow its competitors to surpass the Company via lower labor costs and better efficiencies. He stated that specifically, the Company was unwilling to allow certain of its units to tolerate labor costs which were markedly higher than those of other operating units.

Spehalski went on to assert that: ''Because the underlying premise of your letter is wrong, the vast majority of the information which you seek is not relevant to our negotiations.'' He stated that: ''Specifically, Request Nos. 2, 3, 5, 6, 7, and 8 are not relevant to the issue of whether Local 116 will accept the proposal made by Stroehmann in order to remain competitive in the Upstate New York area.'' With respect to request 1, he listed the Company's principal competitors in the upstate New York area, but did not refer to competitors on a national level. With respect to request 4, Spehalski provided the requested information as to unit employees only. He stated that: ''information concerning non-bargaining unit employees and management personnel is not relevant absent some explanation by you to me as to why such information will assist Local 116 in the current negotiations.''

The Union did not reply to Spehalski's letter. The Company did not furnish any of the requested information beyond that indicated above, and the parties did not thereafter meet or further discuss the Union's request. On January 10, the Union filed an unfair labor practice charge (Case 3–CA–18318), alleging that the Company unlawfully refused to supply requested information to aid in collective-bargaining for a new contract. In late February, the Union withdrew that charge and a subsequent charge (Case 3–CA–18377), pertaining to the Company's decision to unilaterally eliminate the bargaining unit. Thereafter, the Union filed the present charge.

Meanwhile, by letter dated January 12, Spehalski told Schmid that as the Union had not responded to the Company's proposal of December 6 regarding bargaining dates, ''I assume you are not interested in bargaining.'' Spehalski asserted that he was reminding Schmid of his declaration in that letter that the Company's willingness to bargain would expire on February 1, at which time the Company would make a unilateral decision. By letter dated January 20, Schmid responded that the Company failed to furnish the requested information, and that until the information was furnished and the unfair labor practice charges resolved, ''it will be impossible to continue bargaining.'' Schmid declared that the Union ''is interested, ready and willing to bargain at any time, as soon as you furnish us with all of the requested information. This is required by law.''

By letter dated January 24, the Union presented its third request for information. The text of the letter was as follows:

> This letter serves as the union's request for information which is necessary for the union's preparation for the bargaining for a successor collective bargaining agreement. This letter seeks information regarding the pension and 401–K plan which is in effect at the company and in which our members are participants.
>
> Please provide the following:
>
> 1. A copy of any and all documents which describe the structure of the plans and the nature of the benefits, including but not limited to the plan description, plan summary document or any other written materials which are maintained and distributed in accordance with ERISA and other applicable state and federal laws.
>
> 2. A listing of all employees currently participating in the plans, together with a schedule of accrued benefits and status of vesting rights.
>
> 3. A listing of the [sic] both plans current holdings and investments, together with copies of reports or au-

dited statements of the plan's investment advisors and accountants for the last three years.

4. State whether the plan has adopted any particular investment strategies and provide copies of any documents outlining such strategies.

5. To the extent not provided above, list all of the benefits and methods of withdrawal of funds which are vested in employee accounts.

Please provide this information as soon as possible so that our financial consultants can review this information prior to the commencement of bargaining.

Schmid testified that Kerr prepared this request, and that the Union needed the information in order to bargain over pension and 401(k) issues.

By letter dated February 1, Spehalski stated that as of that date, the Company decided ''to implement operational changes at our Syracuse facility based upon business considerations which include the elimination of the Shipping Bargaining Unit.'' Spehalski asserted that consequently, the Union's request for information for the stated purpose of negotiating a successor contract, was moot. Spehalski stated that the Company was prepared to negotiate over the effects of its decision on the unit employees, and would furnish the requested information, insofar as relevant to effects bargaining.

Spehalski went on to assert that the timing of the Union's request suggested that the Union was engaging in delaying tactics. Spehalski asserted that the Company's ''proposals on the pension and 401–K issues were made known to you as early as October of 1992 and reiterated in November, 1993.'' Spehalski testified, in sum, that by this assertion he meant the following: In late 1992, the Company changed its health insurance and 401(k) pension plans, by enhancing the 401(k) plan and reducing retirement and health coverage. The Company offered to discuss the changes with the local unions, including the Union, which represented units of its employees. Schmid, on behalf of the Union, declined the offer, saying that the Union preferred to remain with the plan which the parties had negotiated 3 years earlier. Schmid indicated that the Company was free to improve the 401(k) plan, but not to reduce benefits. Therefore there was no bargaining over the changes.

By letter dated February 3, Schmid responded that the changes were illegal, the Union would file additional unfair labor practice charges, and the Union would not meet to engage in effects bargaining. Schmid testified that the Union did not request the information as a delaying tactic, but that the Company delayed bargaining by failing to furnish the information requested by the Union in its December 10 letter. The Company never furnished the information requested in the January 24 letter.

3. Allegations of unlawful direct dealing with the employees, solicitation, and promise of benefits

These allegations are based on the testimony of Union Steward Cleavenger.

Cleavenger testified in sum as follows: During the last week of January, he approached General Manager Leta in his office. Cleavenger wanted to see whether the Company and the Union could get back together and work things out. He told Leta that he would contact Schmid in order to get the parties back to the table. Leta said he was available, the issues were negotiable, and he thought the parties could work out a deal. That same day, Cleavenger spoke to Schmid. Schmid said that he would not meet with the Company unless the Company provided documentation of its financial situation.

Cleavenger further testified in sum as follows: He did not agree with the way Schmid was handling the negotiations. About February 1, he again approached Leta in his office. He did so to discuss possible decertification of the Union. Cleavenger did not do so as a union representative. Rather, he wanted to protect some jobs, including his own. Cleavenger got the idea of decertification as a result of a conversation among himself, employee Chuck Shelley, and then Shipping Manager Les Fischer, sometime between January 14 and 21.

Cleavenger further testified in sum as follows: At their second conversation, Cleavenger and Leta talked about decertification. Cleavenger said he wanted ''something to sweeten the pot of decertification.'' He referred to four jobs which would remain after decertification. Cleavenger commented that two employees (Fred Awad and John Gorman) were nearing retirement age. Cleavenger anticipated that if they retired, he could get one of the remaining shipping jobs. Cleavenger asked whether the terminated employees could get an additional 30 days of paid health care coverage (this was not included in the Company's proposal). Leta answered that he saw no problem. Cleavenger asked about wages. Leta said they were negotiable. Cleavenger referred to the wage rates at Sayre, which were about $1-per-hour less than the unit rate, and about $1-per-hour above the Company's contract proposal. Leta said they would be roughly in the same range as Sayre, and negotiable. Cleavenger asked whether, if Awad and Gorman retired, they could receive unemployment compensation until age 62, and also receive health care benefits. (Under the Company's contract proposal, employees who retired prior to January 1, 1994, would receive retiree health coverage under the company plan, but for those who retired after that date, age plus years of service had to equal 85 in order to receive the 50-percent company contribution toward the cost of coverage.)

Cleavenger further testified in sum as follows: At about this point in their conversation, Leta received a telephone call. He said it was from Spehalski. Leta said that Spehalski said the retiring employees would be eligible for unemployment compensation if they retired immediately. Terminated employees would receive benefits in accordance with the 1990–1993 contract. The terminated employees who did not retire would receive severance pay. Cleavenger asked if the remaining employees would receive the same 401(k) employer contribution and health care benefits as the Sayre employees. Leta said they would. (The Sayre employees received 401(k) employer contribution under the company plan, which was greater than that under the 1990–1993 contract but equal to the Company's contract proposal.) Leta said, without explanation, that there would probably be a break in work of 30 to 60 days. Cleavenger said he would meet with the employees about decertification. Leta said he was willing to meet with the employees.

Cleavenger further testified in sum as follows with respect to this second conversation: Leta initially seemed enthusiastic. After receiving Spehalski's call, he became more sub-

dued. Leta then repeatedly said that he was not allowed to dangle a carrot in front of Cleavenger. He said that he was able to do the things they discussed, but this was ''definitely off the record.'' Leta said that if they decertified, they would have four remaining jobs in the Syracuse area, and Leta would have no problem with some of the other things they discussed. Leta said these matters were negotiable. In his deposition in the 10(j) injunction proceeding, Cleavenger stated, in response to a question as to whether the above proposals were contingent on decertification: ''I wouldn't say that they were contingent to the fact that it was laid in law, if you de-certified, this is what you would get. I personally believed this was the carrot I was talking about earlier.'' Cleavenger testified that by using the phrase ''laid in law,'' he meant that Leta did not put in writing exactly what the employees would get.

Cleavenger further testified in sum as follows: After his second conversation with Leta, he met with the unit employees on or about February 7 and told them about his discussion with Leta. Initially the employees were in favor of decertification. Some questioned however whether they could rely on Leta's promises. Then employee Gorman said he wanted to continue working and not retire. The meeting ended in chaos. On 1 or 2 days later, Cleavenger approached Leta for the third time. He told Leta what happened at the employee meeting, and asked for confirmation of the Company's promises. Leta declined to put anything in writing, but assured Cleavenger that there were no problems with the conditions they discussed. Leta said that Cleavenger showed initiative and was a go-getter, and these were the qualities he wanted in a salesman. He said he would speak to Regional Sales Manager Ian Strachan about a sales position for Cleavenger. (The Company did not offer sales positions to unit employees in the contract negotiations.) A few days later, Strachan told Cleavenger that he spoke to Leta, that Cleavenger was a good choice for salesman and could have the next available sales job.

This was not the first time that Cleavenger spoke to the Company about a sales position. Cleavenger testified in sum as follows: In December, he heard that the Company hired a new salesman. He asked Sales Manager Strachan why shipping employees were not considered for the job. Cleavenger asked to be considered for a sales job. Strachan said that he didn't know the shippers were interested, and that he thought one or two of them would make good candidates.

Cleavenger further testified in sum as follows: Following his third conversation with Leta, he spoke to the other employees in small groups, solicited them to sign a decertification letter, obtained signatures from one-half of the unit employees, and, on February 10, mailed a decertification petition to the Board's Regional Office. Cleavenger told Leta that he had a sufficient showing of support. That same day (February 10), the Company summoned the employees to a meeting concerning the effects of unit termination. Spehalski and Leta distributed printouts indicating the amounts of severance and vacation pay. Cleavenger asked about the extra 30 days of health care coverage. Spehalski answered that it wasn't being offered. Cleavenger realized that ''decertification was off'' and left. The next day the Company terminated the unit employees.

General Manager Leta testified in sum as follows: Following the November 16 negotiating session, he met with the unit employees, including Cleavenger, to explain the Company's position (the Union having indicated that it did not object). In December, Sales Manager Strachan told him that Cleavenger asked about offering sales jobs to the shippers. Leta answered that he first had to resolve the negotiations. Leta met with Cleavenger three times in late January and early February. Cleavenger initiated all conversations by coming to Leta's office. Leta assumed that Cleavenger spoke with him in Cleavenger's capacity as union steward. Although Leta initially however did not know why Cleavenger wished to see him, Leta began the first conversation by saying that he could not speak to Cleavenger as an individual, because he (Cleavenger) was represented by the Union. Leta did so because this was his standard remark to employees while negotiations were pending.

Leta further testified in sum as follows with respect to their first conversation: Cleavenger responded to Leta's opening statement by saying ''that's why I'm here.'' Cleavenger said he was not happy with the progress of negotiations, and couldn't understand why the Union couldn't come to the table and save three or four jobs. He said he wanted to discuss decertification with the employees that evening. Cleavenger asked whether the employees could bargain directly if they decertified the Union. Leta replied that the Company's proposal was on the table until February 1, and if there was no union, the Company could deal directly with the employees. Leta asked Cleavenger to try to get Kerr to the table. Cleavenger said he would talk to the employees that evening. As far as Leta was concerned, decertification was a nonissue. The Company had resolved to make a decision on February 1, and he did not believe it was possible for the employees to file a decertification petition by that date. Leta believed that Cleavenger was using decertification as a ploy to get the Union to the bargaining table.

Leta further testified in sum as follows: About February 1, a few days after their first conversation, Cleavenger again came to his office. Leta said he could not deal with him directly, because Cleavenger was represented by the Union. Cleavenger said he couldn't get enough support for decertification. He asked if the Company could fire the employees and rehire them as nonunion employees. Leta said that was probably illegal. He again asked Cleavenger to try to get Schmid to the table, and thereby possibly save three or four jobs. He asked to talk about the Company's contract proposal. Leta pulled out the proposal. Cleavenger asked why the employees couldn't get Sayre wages. Leta answered that everything was negotiable, and the Company would be agreeable if the Union got back to the table. They also talked about the 401(k) plan and health and retirement benefits. Cleavenger asked about the effects of the Company's change in operations, including severance pay, 30-day extended medical coverage for displaced employees, and possible job transfer (the 1990–1993 contract provided for severance pay). Leta answered that everything was negotiable. He added that the Company would honor severance pay, even though the contract had expired. Cleavenger asked about an opportunity to transfer to a sales position. Leta answered that Cleavenger showed initiative, and he would consider him, but this would have to be discussed at the table. He added that the Company was not opposed to offering a transfer to any employee. Cleavenger asked about unemployment compensation. Leta

replied that he did not know how eligibility would be affected by severance pay.

Leta further testified in sum as follows: During their conversation, Leta received a telephone call from Spehalski, who called to inform him that the Union filed an unfair labor practice charge. Spehalski did not explain the charge. Leta realized that it looked like there would be no negotiations. Therefore, his mood changed. He told Spehalski that Cleavenger was present and asked about eligibility for unemployment compensation, but did not discuss the reason for his presence. Spehalski said he believed the employees were eligible. Leta so informed Cleavenger, and said the Company would not oppose unemployment compensation. Cleavenger said he would meet with the employees that evening. Leta said the Company made its decision in the absence of negotiations, and would move the work to Sayre.

Leta further testified in sum as follows: After his second conversation with Cleavenger, he asked Sales Manager Strachan about which unit employees might be good prospects for sales positions. Strachan answered that Cleavenger and Shelley were qualified. Leta said he would consider the recommendation, and discuss the matter in effects bargaining. In January, employee Shelley twice approached Leta about what they could do to save their jobs, and complained about the Union's failure to return to the bargaining table.

Leta further testified in sum as follows: Between February 6 and 10, Cleavenger came a third time to his office. By this time, the Company decided to have an effects meeting with the employees, as the Union was not bargaining. Cleavenger said he had a sufficient number of employees for decertification. Leta replied that the Company made its decision to transfer the unit work to Sayre, effective as of February 12, and it was too late to do anything else. Leta never said he wanted to meet with the employees about the Company's proposal, and never promised anything in return for decertification. Cleavenger never asked for a written guarantee of terms of employment, and Leta would not have given it, because everything was negotiable.

Spehalski testified in sum as follows: In late January, he called Leta to discuss certain matters, including unemployment benefits for the unit employees, because it was evident there would be no bargaining. Spehalski did not recall any conversation in which Leta said that Cleavenger was in his office to discuss decertification. Spehalski received the Union's initial unfair labor practice charge shortly after the filing date (January 10), and probably informed Leta the same day he received the charge. Spehalski subsequently testified that he did not know when he received the charge.

The Company also presented Sales Manager Strachan and former Shipping Manager Fischer as witnesses. Strachan testified in sum as follows: On December 13, he hired a new salesman. Later that week, Cleavenger asked why he didn't hire from the unit. Strachan answered that he didn't know they were interested, but would definitely consider Cleavenger. Strachan said he would have to check with Leta, because the Company normally did not transfer employees between departments. Strachan did not then, and has not since, had any openings in his department. He however reported the conversation to Leta, and asked how Leta felt about it. Leta said he couldn't transfer the unit employees now, because of the ongoing negotiations. About February 1, Cleavenger asked more than once whether anything had come up. Strachan answered that there were no openings. About the same date, Leta asked Strachan if he was interested in anyone in shipping. Strachan answered that: ''Chuck Shelley and David Cleavenger would be two possibles.'' Leta said he would let Strachan know. Shelley had prior sales experience. Cleavenger did not. Cleavenger worked nights, and Strachan worked days. Strachan however knew Cleavenger, and regarded him as bright, personable, and having a good work record.

Fischer testified in sum as follows: Chuck Shelley approached him and asked if it would do any good if they were not in the Union. Fischer answered that he had no idea. Nothing else was said. Fischer never discussed decertification with Cleavenger or anyone else. He overheard employee conversations about decertification, but did not report them to Leta.

I have certain reservations about Leta's version of his conversations with Cleavenger. If, as Leta testified, he assumed throughout their conversations that Cleavenger was speaking in his capacity as union shop steward, then it would make no sense for Leta to begin their second conversation by saying that he could not deal directly with Cleavenger because he was represented by the Union. More significantly, if Leta initially believed that Cleavenger was speaking on behalf of the Union, then plainly he learned otherwise when Cleavenger made clear that he wanted to decertify or otherwise get rid of the Union. According to Leta's testimony, Cleavenger so indicated in all of their conversations. Therefore, it is evident that Leta understood that: (1) Cleavenger was speaking on behalf of himself and possibly other employees, in derogation of the Union's status; and (2) that he wished to discuss the terms and conditions which the Company would institute or follow when the Union was removed as employee bargaining representative.

I also do not credit Leta's testimony that Spehalski called in order to inform him that the Union filed an unfair labor practice charge. The Union filed its initial charge on January 10, about 3 weeks before the second conversation between Cleavenger and Leta, when Spehalski called. As admitted by Spehalski in his testimony, he received the charge shortly after January 10, about 3 weeks before the second conversation between Cleavenger and Leta, when Spehalski called. As admitted by Spehalski in his testimony, he received the charge shortly after January 10, and promptly informed Leta. Therefore, it is evident that Leta knew about the charge long before that conversation. The witnesses' testimony indicates that Spehalski told Leta that either the retirees or terminated employees would be eligible for unemployment compensation. If so, this information would not cause Leta's mood to change. If anything, it would tend to heighten his enthusiasm. Therefore, it is evident that Spehalski said something else which caused Leta's mood to change. The most likely, and indeed only other apparent explanation is that indicated by Cleavenger's testimony; namely, that Spehalski cautioned Leta to be circumspect when talking about the terms and conditions which would follow upon decertification.

I also find it more probable, as indicated by Cleavenger's testimony, that Spehalski told Leta that the Company would not object if employees Awad and Gorman applied for unemployment compensation after they accepted company retirement. Laid-off employees would normally be eligible for unemployment compensation if they remained in the job mar-

ket, regardless of whether they received severance pay. Employees who took layoff, i.e., voluntarily left their employment, however would normally not be eligible for unemployment compensation if the employer informed the state agency of the circumstances of their departure. It is evident that Cleavenger was asking, and Leta was giving assurance, after checking with Spehalski, that the Company would not block the retiring employees' applications for unemployment compensation.

I however do not totally credit Cleavenger's version of his conversations with Leta. Cleavenger's testimony indicates that he sought to portray himself as a ''good guy,'' who remained a union loyalist until Schmid adamantly refused to return to the bargaining table, and who thereafter sought to protect the interests of all the unit employees. I do not credit his testimony that he initially raised the matter of decertification with Leta at their second meeting. If so, then it is unlikely that Leta would have been prepared to discuss specific terms and conditions, and even more improbable that Spehalski would have known what they were discussing, and been able to counsel Leta in this regard. Indeed, Cleavenger's testimony that he began their second conversation by asking for ''something to sweeten the pot of decertification'' indicates that they previously talked about the matter. I credit Leta's testimony that Cleavenger raised the matter of decertification in their first meeting. In light of the testimony of Leta and Fischer, it is evident that by the time of the second conversation, the Company was well aware that at least some employees, including Cleavenger and Shelley, were seeking to save their jobs by circumventing or getting rid of the Union. I however find it unnecessary to decide whether Fischer was a party to any conversation with Cleavenger and Shelley concerning decertification.

For the reasons discussed above, I credit Cleavenger's testimony concerning his second conversation with Leta. With regard to the third conversation, I do not credit Cleavenger's indication in his testimony that Leta initially raised the matter of a sales position for Cleavenger. As Cleavenger testified, he anticipated that on the change in operations, Awad and Gorman would retire, and he could get one of the remaining shipping jobs. When Gorman said he wanted to continue working, Cleavenger however realized that he probably would be laid off. Therefore, in their third meeting, Cleavenger asked about an opportunity to transfer into a sales position. I credit Leta that in their third conversation, he told Cleavenger that the Company intended to proceed with its plan to transfer the work to Sayre and, in sum, that decertification was no longer an option. It is unlikely that by this late date (on or about February 7) Leta would still be talking about a deal in return for decertification. I however credit Cleavenger's testimony that Strachan told him he could have the next available sales job.

4. The change in operations

On February 11, the Company eliminated all unit positions. Employees Awad and Gorman elected to take retirement. They received paid health coverage as if they had retired before January 1. The other terminated employees received severance pay under the terms of the expired contract. The Company also laid off four of its six road drivers based in Syracuse.

The Company consolidated all order selection at its Sayre bakery. Shipments to all depots in the Central New York Segment, except Potsdam and Malone, went directly to the depots. Because of the distance involved, shipments to Potsdam and Malone went by way of Syracuse. The Company however eliminated the former ''double handling'' (unloading and reloading). The two remaining road drivers at Syracuse simply hooked up the loads to their tractors for delivery to Potsdam and Malone.

As for deliveries destined to the Syracuse area routes, the shipments were broken down by route at Sayre. When such shipments arrived at Syracuse, the road driver placed each load in the designated spots, where the loads were picked up by the respective route salesmen. The road drivers picked up the empty baskets for return to Sayre. Thrift store clerks conducted the stale (item) check function previously performed by a unit employee. This was consistent with the Company's practice at its other thrift stores. The Company contracted out the cleaning and maintenance work previously performed by the sanitor.

After eliminating the unit operation, the Company began storing low turnover food ingredients at Syracuse, as there was now available space. These items had previously been stored at Sayre. As part of this change, the Company eliminated a stock clerk position at Sayre, and reassigned former Shipping Manager Les Fischer to the newly created position of sales safety coordinator. Fischer devoted 20 to 25 percent of his time to warehouse work in connection with these stored items, which came directly from the suppliers to Syracuse. Fischer used a motorized forklift, which necessitated 1 or 2 days of training on his part. The shipping employees had previously used handtrucks to handle stacks of baked goods.

As a result of the changed operation, there was an increase in shipping work at Sayre. The Company hired an additional five or six shipping employees at Sayre.

General Manager Leta testified in sum as follows: The Company considered the possibility of retaining a maximum of three or four unit employees, but opted instead to eliminate the entire unit. The Company believed that retention of such employees would create scheduling problems. The Company could not assure continuous full-time work for all of them. Conversely, there might be excessive overtime costs when one or more of them was out sick or on vacation. The Company was also concerned that the Union might call a strike, in which case the Company's Teamsters-represented employees might refuse to cross a picket line.

B. *Analysis and Concluding Findings*

1. Whether the Company's decision to eliminate the Syracuse unit was a mandatory subject of bargaining

The Company contends that its decision to eliminate the Syracuse unit was not a mandatory subject of bargaining. I disagree.

The complaint correctly alleges that the Company did not simply terminate an operation. Rather, the Company ''reassigned unit work to nonunit employees and to supervisors.'' The Company continued to perform the same work as had been performed by the unit employees, using different personnel. Shipping employees at Sayre performed the work of sorting and loading baked goods for delivery to depots in the

Central New York Segment, which had previously been performed by the Syracuse shippers. At Syracuse, ''sales safety coordinator'' Les Fischer, drivers, and thrift store clerks performed work previously assigned to unit employees, i.e., movement of goods within the warehouse, unloading of trucks and loading empty baskets onto trucks, and stale item checking. Subcontractor personnel did the cleaning and maintenance work previously performed by the sanitor. In sum, the present case is one involving relocation of unit work.

As held by the Board, ''a decision to relocate unit work case is one more closely analogous to the subcontracting decision found mandatory in *Fibreboard*[5] than the partial closing decision found nonmandatory in *First National Maintenance*.[6] *Dubuque Packing Co*., 303 NLRB 386, 391 (1991), enfd. sub nom. *Food & Commercial Workers Local 150-A v. NLRB*, 1 F.3d 24 (D.C. Cir. 1993), cert. dismissed 146 LRRM 2896 (D.C. Cir. 1994). In *Dubuque*, the Board spelled out the following test for determining whether an employer's decision to relocate unit work is a mandatory subject of bargaining:

> Initially, the burden is on the General Counsel to establish that the employer's decision involved a relocation of unit work unaccompanied by a basic change in the nature of the employer's operation. If the General Counsel successfully carries his burden in this regard, he will have established prima facie that the employer's relocation decision is a mandatory subject of bargaining. At this juncture, the employer may produce evidence rebutting the prima facie case by establishing that the work performed at the new location varies significantly from the work performed at the former plant, establishing that the work performed at the former plant is to be discontinued entirely and not moved to the new location, or establishing that the employer's decision involves a change in the scope and direction of the enterprise. Alternatively, the employer may proffer a defense to show by a preponderance of the evidence: (1) that labor costs (direct and/or indirect) were not a factor in the decision or (2) that even if labor costs were a factor in the decision, the union could not have offered labor cost concessions that could have changed the employer's decision to relocate.

Applying the *Dubuque* test, I find that the General Counsel established that the Company's decision involved a relocation of unit work unaccompanied by a basic change in the nature of the Company's operation. The Company continued to deliver baked goods to its depots in the central New York segment. The Company simply, in sum, altered its method of delivery by sending some shipments directly to depots, instead of via Syracuse, eliminating what it regarded as double handling at Syracuse. This was not a basic change in the nature of the Company's operation.

I further find that none of the five defenses articulated by the Board in *Dubuque* are present in this case. As previously discussed, the work performed after unit termination was identical or substantially similar to that previously performed by the unit employees. Some of the work was still performed at the Syracuse facility. The basic work was not discontinued. As indicated, the Company had to hire five or six additional shipping employees at Sayre to perform work previously performed by unit employees. There was no change in the scope or direction of the enterprise. The Company continued to deliver its line of baked goods to the upstate New York region, asserting in sum that it simply wished to do so more economically and efficiently. Indeed, the Company told the Union that it wished to remain in the baking industry in upstate New York.

The evidence further demonstrates that labor costs, both direct and indirect, were a conspicuous factor in the Company's decision. In this regard, Board precedent holds that ''quality control,'' i.e., labor efficiency and productivity, is an indirect labor cost factor. See *Bob's Big Boy Family Restaurants*, 264 NLRB 1369 (1982). With regard to cleaning and maintenance work, the Company itself took the position that direct labor costs, specifically the sanitor's wages, were the only reason why it sought to subcontract that work.

As for the fifth defense stated in *Dubuque*, supra, the Company's own position in the negotiations belies any contention that the Union could not have offered labor cost concessions that could have changed the Company's decision to relocate. The Company proposed to retain three or four jobs in exchange for wage and other contractual concessions, and asserted that its proposals were negotiable. For its part, the Union declared that ''if we're part of the problem, we can perhaps absorb some of the pain.'' In this regard, the following language in *Big Boy Restaurants* is pertinent:

> [R]espondent's primary concerns in deciding to subcontract were escalating costs and portion control. As the Court noted in *Fibreboard*, production cost matters, which by their very nature include wages, fringe benefits, and other employment costs, over which the union can exercise substantial control, are ''particularly suitable for resolution within the collective bargaining framework, and industrial experience demonstrates that collective negotiation has been highly successful in achieving peaceful accommodation of the collective interests.'' As for portion or quality control, the potential input by the Union here is not as direct as that in cost factors. We do note, however, that quality control is a common concern in collective-bargaining relationships and we are unwilling to say here that collective bargaining would be of minimal value to Respondent in achieving its objectives. [Id. at 1371.] [Footnotes omitted.]

As the Company's decision was a mandatory subject of bargaining, I shall next address the propriety of the Union's December 10 request for information.

2. Whether the Company unlawfully failed or refused to furnish information requested in the Union's December 10 letter

Preliminary to determining the propriety of the Union's request for information, it is necessary to resolve certain questions concerning the scope of that request. First, the Union's request, on its face, was addressed to documents and information generated or maintained by the Company, i.e., Stroehmann Bakeries, Inc. The request did not, on its face, call for documents or information generated or maintained by

[5] *Fibreboard Corp. v. NLRB*, 379 U.S. 203 (1964).
[6] *First National Maintenance Corp. v. NLRB*, 452 U.S. 666 (1981).

Weston or any of its other subsidiaries and affiliates, including Weston's annual reports, unless such documents or information fell within the omnibus clause of the Union's request, i.e., ''other financial documents [which the Company has] which would assist the Union in assessing the Company's claim of inability to pay.''

Second, the Union's request did not on its face, purport to cover information obtained by Leta (as testified by him), in canvassing other employers to determine what they paid their shipping employees. The General Counsel contends (Br. p. 19) that such information was called for in items 2, 5, 7(i), 7(iv), and 8(i) of the Union's request. Item 2 however is inapplicable, because the canvass was not utilized by the Company ''on a regular basis.'' Rather, as testified by Company General Manager Leta, he conducted the canvass in preparing for the Company's contract proposal. Item 5 is also inapplicable, because the canvass did not constitute a periodic business report. Items 7(i), 7(iv), and 8(i) are not applicable, because the canvass was not a financial statement, balance sheet, auditor or accountant's report, or statement of assets and liabilities. As with the Weston annual report, the Union called for Leta's canvass only insofar as covered by the omnibus clause of the December 10 letter. Item 2 of the December 10 letter however would apply to the weekly reports on payroll and overtime hours, as described by Leta.

To some extent, as will be further discussed, the Union's request for information addressed competitiveness, in the sense of the Company's position in relation to its competitors. The principal thrust of the Union's request however, encompassing most items, concerns the Company's financial situation. Under the doctrine of *NLRB v. Truitt Mfg. Co*., 351 U.S. 149, 153 (1956), ''a refusal . . . to substantiate a claim of inability to pay increased wages may support a finding of a failure to bargain in good faith.'' The predicate for this doctrine is, as stated by the Supreme Court: ''Good-faith bargaining . . . requires that claims made by either bargainer should be honest claims.'' (Id. at 152.) In the present case, the Union asserted that requested information was ''relevant and necessary to assess [the Company's] claim of financial hardship and inability to pay wage increases for the [unit employees].'' Therefore, the question is presented as to whether the Company made such claims.

I find, notwithstanding the Company's disclaimer, that the Company did in fact purport to base its bargaining position on claimed financial hardship and inability to pay. Industrial Relations Director Spehalski began his presentation on November 16 by asserting that the Company suffered huge financial losses in 1992, and projected continuing heavy losses in 1993. He did not limit his presentation to the Syracuse operation, although he asserted that the Syracuse operation itself was operating with substantial financial loss. Spehalski did not attribute the Company's losses to high wages or inefficient operation. Rather, he attributed the losses to market factors, including falling bread prices, higher flour prices, and lower demand for certain company products.

Spehalski made clear that because of these alleged financial losses, the Company's position would be sharply different from that in prior negotiations. In past negotiations, the Union would ask, and the Company would give contract improvements. Now the Company was proposing to eliminate the Syracuse unit operation, or to reduce the operation, eliminate unit jobs, and drastically reduce the wages and benefits of the remaining unit employees. Spehalski further made clear that the Company was making these proposals as a means of reducing its alleged financial losses. Indeed, Spehalski and Leta told the Union that they needed concessions resulting in a saving of about $150,000 annually, i.e., in an amount equal to the alleged financial losses sustained by the Company's Syracuse operation, although the bargaining unit comprised only part of that operation.

As indicated, Spehalski told the Union that he could be taking a position of inability to pay, but was not because of Weston's deep pockets. Spehalski however followed this statement by asserting that Weston wanted to remain in the baking business in the United States and to remain competitive. Spehalski further asserted that the Company could not go on without a parent company being willing to fund its losses, and that the Company needed to eliminate the Syracuse unit and relocate its work to Sayre, among other changes, in order to meet Weston's requirement that the Company be competitive. In sum, insofar as pertinent to the negotiations, Spehalski was saying that absent such changes, Weston would not continue to subsidize the Company, and the Company could not afford to continue the present unit complement and wage scales, let alone a wage increase. Therefore, the Company was basing its contract proposals on asserted financial hardship and inability to pay.

The Board has repeatedly held that where as here, an employer predicates its bargaining position as a matter of necessity by reason of current alleged financial losses, the bargaining union is entitled, on request, to information pertaining to the alleged losses and their impact on the employer's business. The employer violates its bargaining obligation by failing or refusing to provide such information, notwithstanding an express disclaimer that it is pleading inability to pay, where the thrust of the employer's position indicates otherwise. See *Shell Co*., 313 NLRB 133 (1993); *Facet Enterprises*, 290 NLRB 152, 153 (1988), enfd. 907 F.2d 963, 979–981 (10th Cir. 1990); *Clemson Bros*., 290 NLRB 944 (1988); and *Continental Winding Co*., 305 NLRB 122, 125 (1991).

The present case is also similar, in critical respects, to *Steelworkers Local 5571 v. NLRB (Stanley-Artex Windows)*, 401 F.2d 434, 436 (D.C. Cir. 1968) (opinion by Burger, C.J.), cert. denied 395 U.S. 946 (1969); and *NLRB v. Bagel Bakers Council*, 434 F.2d 884, 887–888 (2d Cir. 1970), cert. denied 402 U.S. 908 (1971). In both cases, the union involved requested information concerning the employer's financial condition, including financial statements. In *Steelworkers*, the employer asserted that although its parent corporation was making money, the division (employer) was not, and the division had to stand on its own. When the union made its wage proposals, the employer's representative responded (according to his testimony) that ''if we gave any more [sic], at this time, I didn't see how we could remain competitive.'' The Court, in agreement with the Board, held that ''the contention that the division had to 'stand on its own' and that it could not remain competitive if it granted [u]nion demands puts ability to pay in issue.'' In *Bagel Bakers*, involving a multiemployer bargaining association, the Council demanded a 40-percent reduction in labor costs, asserting that its employer members were losing money because of increased competition from non-Council producers. The Council's president subsequently admitted that not all of

the employer members were losing money, ''but certain of my members want to take advantage of this situation.'' The Court, in agreement with the Board, held that the Council's position constituted a claimed inability to pay. In *Steelworkers* and *Bagel Bakers*, the respective courts held that the respondent employers violated Section 8(a)(5) of the Act by failing and refusing to furnish the requested financial information.

In the present case, as in *Steelworkers*, supra, the Employer had a parent corporation with deep pockets, but indicated that the parent corporation expected the Employer to stand on its own, and argued that its bargaining proposals were necessary to remain competitive. In the present case, as in *Bagel Bakers*, supra, the Employer(s) predicated their bargaining position on alleged financial losses caused by market factors. In neither *Steelworkers* nor *Bagel Bakers* did the employers expressly plead inability to pay. Nevertheless, in each case the Board and the courts held that the Union was entitled to employer financial records and information.

The Company's reliance on *Nielsen Lithographing Co*., 305 NLRB 697 (1991), affd. sub nom. *Graphic Communications Local 508 v. NLRB*, 977 F.2d 1168 (7th Cir. 1992); *Burruss Transfer*, 307 NLRB 226 (1992); *Beverly Enterprises*, 310 NLRB 222 (1993), affd. in pertinent part sub nom. *Torrington Extend-A-Care Employee Assn. v. NLRB*, 17 F.3d 580 (2d Cir. 1994); *Concrete Pipe & Products Corp*., 305 NLRB 152 (1991), affd. sub nom. *Steelworkers v. NLRB*, 983 F.2d 240 (D.C. Cir. 1993); and *Georgia-Pacific Corp*., 305 NLRB 112 (1991), affd. sub nom. *Paperworkers v. NLRB*, 981 F.2d 861 (6th Cir. 1992), is misplaced. In *Shell*, supra, the Board distinguished the first four abovenamed cases as follows: ''In *Nielsen* . . . the employer repeatedly stated that it was still making a profit; the thrust of its economic assertions pertained to its future [economic] competitiveness. . . . Similarly, in *Burruss Transfer* . . . the employer's claims were grounded in its claims of competitive disadvantage, and it did not assert that it needed economic concessions as a matter of economic survival. Further, in *Beverly Enterprises* . . . the employer expressly stated that it was not going out of business and essentially indicated that it simply was not as profitable as it once had been. . . . And in *Concrete Pipe & Products Corp*. . . . the employer's claims were wholly derived from its stated desire to be competitive and its claims as to 'survival' did not refer to any imminent risk or immediate economic peril.'' Those distinctions also apply to the present case. In *Georgia-Pacific*, supra, the employer's negotiator ''made it clear that Respondent was a very wealthy corporation, was not pleading poverty, and wanted concessions simply because 'we just want more.'''' (305 NLRB at 116). Therefore *Georgia-Pacific*, like the four cases distinguished by the Board in *Shell*, is also distinguishable from the present case.

In the present case, the Union was entitled to the requested information in order to evaluate the Company's assertions of financial hardship and inability to pay, and thereby be enabled to formulate an informed response to the Company's contract proposals. Items 2, 3, 5, 6, 7, and 8 pertained to the Company's financial condition. Therefore, such information was relevant and necessary to the Union's performance of its duties as bargaining representative. The Board has held, in sum, that where the employer has pleaded ''financial inability to pay or its equivalent,'' the union bargaining representative is entitled to such information. *S-B Mfg. Co*., 270 NLRB 485, 486, 492 (1984). In that case, the Board held that the union was entitled to requested information ''including Federal tax returns and audit reports for the last 3 years along with the balance sheets and income statements; detailed supporting schedules of costs of goods sold, including breakdowns of labor costs and supervisory and other non-labor wages and benefits, and interim financial statements for the last period for which the books were closed together with the same data for a comparable period the preceding year.'' See also *Circuit-Wise, Inc*., 306 NLRB 766, 768–769 (1992). In the present case, the Company advanced no reason for refusing to furnish the information requested in items 2, 3, 5, 6, 7, and 8, other than its contention that the information was irrelevant. As discussed, I find that contention without merit.

With regard to item 1 of the Union's December 10 letter the Company, without explanation, failed to identify its competitors on a national level. As discussed, the Company did not limit its November 16 presentation to the upstate New York area. Rather, the Company based its position on its alleged heavy financial losses and need to remain competitive, both systemwide and in the upstate New York area. Therefore, the Union was entitled to the names of the Company's primary competitors both on a national and local level, in order to evaluate the Company's economic situation in relation to its competitors, including, e.g., comparative wage and benefit scales and staffing, and thereby further enable the Union to make an informed response to the Company's contract proposals. The Company violated its bargaining obligation by failing to identify the companies which it considered to be its primary competitors on a national level.

With regard to item 4 of the Union's December 10 letter, the Company declined to furnish the requested information, insofar as such information covered nonbargaining unit and management personnel. I find that the requested information was relevant and necessary to the Union's performance of its duties as employee bargaining representative. Such information was pertinent to the Company's bargaining position and the Union's response to that position. The information was pertinent, e.g., to enable the Union to evaluate whether the unit employees were being asked to shoulder a disproportionate share of the sacrifices proposed by the Company, and whether the Company's proposals were in fact necessary or even likely to improve either the Company's financial situation or competitive posture. In this regard, it is significant that on termination of the Syracuse shipping unit, the Company found it necessary to hire additional shipping employees at its nonunion Sayre facility and, at Syracuse, assigned nonunit personnel, including Shipping Manager Fischer, to perform work previously assigned to unit employees.

As discussed, the Company, in its November 16 presentation, relied, at least in significant part, on Weston's annual report or reports and Leta's survey of other firms engaged in shipping operations. For the reasons previously discussed, the Company's bargaining position was based on asserted financial hardship and inability to pay. Therefore, these documents fell within the omnibus clause of the Union's request, i.e., ''other financial documents which would assist the Union in assessing the Company's claim of inability to pay.''

For the foregoing reasons, I find that the Company violated Section 8(a)(5) and (1) of the Act by failing and refus-

ing, with limited exceptions, to furnish the information requested by the Union in its December 10 letter.

3. Whether the Company unlawfully failed or refused to furnish information requested in the Union's January 24 letter

As indicated, the Union by its January 24 letter requested the Company to furnish certain information concerning the Company's pension and 401(k) plan, for the asserted purpose of ''preparation for the bargaining for a successor collective bargaining agreement.'' The Company responded, in sum, that in view of its decision to eliminate the bargaining unit, the Union's request was moot, although the Company was prepared to furnish such information insofar as relevant to effects bargaining. The Company also questioned the Union's good faith in requesting the information at this late date. The Union subsequently made clear that it would not meet to engage in effects bargaining, and the information was never furnished.

If the Company had properly failed or refused to furnish information requested in the Union's December 10 letter, then its position with respect to the January 24 request would probably be well taken. As found, the Company unlawfully failed or refused to honor most of the December 10 request. Therefore, the Company, and not the Union, was responsible for the failure of the parties to resume negotiations. The matter of a successor contract remained subject to further negotiations, pending receipt of the information requested in the December 10 letter. Therefore, the Union's January 24 letter was timely.

Information concerning employee fringe benefits, including the cost, coverage, and financing of retirement programs, is presumptively relevant and reasonably necessary to a union in carrying out its collective-bargaining functions, particularly during ongoing negotiations. See *Baldwin Shop 'N Save*, 314 NLRB 114, 121 (1994), and cases cited and discussed therein. It is immaterial that the Union previously declined to reopen its 1990–1993 contract to negotiate changes in health and retirement coverage. The parties were in the process of negotiating a successor contract, the Company proposed changes in fringe benefit coverage, and the Union anticipated that it would present its own proposals on receipt of requested information. The Company violated Section 8(a)(5) and (1) of the Act by failing and refusing to furnish the information requested by the Union in its January 24 letter.

4. Whether the Company violated Section 8(a)(1) and (5) of the Act through its meetings with Union Steward Cleavenger

On the basis of the credited testimony previously discussed, I find the Company violated Section 8(a)(1) and (5) of the Act by bypassing the Union and dealing directly with its employees concerning terms and conditions of employment and promising them benefits in exchange for employee decertification of the Union.

As found, Union Steward Cleavenger initially raised the subject of decertification with General Manager Leta. Leta however picked up on that topic. Thereafter, and until their third and final meeting, they discussed terms and conditions of employment to be implemented if and when the employees decertified the Union. Cleavenger made clear, and Leta so understood, that Cleavenger was not speaking in his capacity as union steward, was speaking and acting in derogation of the Union's status as bargaining representative, and purported to speak on behalf of himself and employees who sought to get rid of the Union. Therefore, the Company's reliance on *Colorado-Ute Electric Assn*., 295 NLRB 607, 622–623 (1989), is misplaced.

General Manager Leta promised Cleavenger that in the event of decertification, the employees would receive benefits which exceeded those proposed to the Union. In dealing with the Union, the Company indicated that three or four jobs would remain. In talking to Cleavenger, Leta indicated that four jobs would remain. Leta told Cleavenger that wages would be roughly in the same range as at Sayre, although the Company had proposed to the Union wage rates of about $1 per hour below the Sayre level. Leta also assured Cleavenger that terminated employees could get an additional 30 days of paid health care coverage, although this was not included in the Company's contract proposal. Leta, after consultation with Director of Industrial Relations Spehalski, indicated that employees Awad and Gorman could take voluntary layoff, with the understanding that the Company would not object to their receiving unemployment compensation. Leta also promised that the employees would receive the same 401(k) employer contribution and health care benefits as the Sayre employees, although these matters (included in the Company's contract proposal) were pending negotiation between the Company and the Union.

I am not persuaded by the Company's argument that it had no motivation to bypass the Union and deal directly with the employees, or promise benefits in exchange for decertification of the Union, because decertification could not be effectuated by the Company's February 1 deadline, or because the Company intended to go ahead with its plans regardless of whether the employees supported the Union's position. The Company was well aware or certainly had good reason to believe that, by such dealing, it could undermine the Union's ability either to resist the Company's demands at the bargaining table or to strike in the event of a failure to reach agreement. By its dealings with and promises made to Union Steward Cleavenger, the Company violated Section 8(a)(1) and (5) of the Act. *Medo Photo Supply Corp. v. NLRB*, 321 U.S. 678, 684 (1944); *General Electric Co*., 150 NLRB 192, 194 (1964), enfd. 418 F.2d 736 (2d Cir. 1969), cert. denied 397 U.S. 965 (1970); *Tyson Foods*, 311 NLRB 552, 566–567 (1993); *Detroit Edison Co*., 310 NLRB 564 (1993); *Fabric Warehouse*, 294 NLRB 189, 192 (1989); *Armour Oil Co*., 253 NLRB 1104, 1108–1109 (1981).

As found, the Company did not promise Cleavenger a sales position in exchange for decertification. By that time, Leta informed Cleavenger that decertification was no longer an option. The question of alternative employment for displaced unit employees however was a mandatory subject for bargaining between the Company and the employees. Cleavenger was not, or might not be, the only unit employee interested in transferring to a sales or other nonunit position. By telling Cleavenger that he could have the next available sales job, the Company bypassed the Union and dealt directly with an employee concerning a mandatory subject of bargaining. The Company thereby violated Section 8(a)(1)

and (5) of the Act. *Otis Elevator Co*., 283 NLRB 223, 225 (1987).

5. Whether the Company violated Section 8(a)(1) and (5) of the Act by unilaterally eliminating all unit positions and reassigning unit work to nonunit personnel

For the reasons previously discussed, the Company's unilateral change in its operations, by which it terminated all unit positions and reassigned unit work to nonunit personnel, was a mandatory subject of bargaining. The Company violated its bargaining obligation by failing and refusing to furnish the Union with requested information which was and is relevant and necessary to the Union's performance of its duties as bargaining representative and, in particular, relevant and necessary for the ongoing negotiations, including negotiations over the Company's proposed changes. The Company further violated its bargaining obligation in bypassing the Union and dealing directly with its employees concerning their terms and conditions of employment. Therefore, there was no genuine impasse in negotiations, and the Company violated Section 8(a)(1) and (5) by failing and refusing to bargain in good faith with the Union prior to relocating the unit work. See *Pertec Computer*, 284 NLRB 810, 812 (1987), supp. decision in 298 NLRB 609 (1990), enfd. as modified sub nom. *Olivetti Office USA, Inc. v. NLRB*, 926 F.2d 181, 189 (2d Cir. 1991), cert. denied 502 U.S. (1991); *Dahl Fish Co*., 279 NLRB 1084 fn. 3 (1986), enfd. 813 F.2d 1254 (D.C. Cir. 1987); *Palomar Corp*., 192 NLRB 592, 597–598 (1971), enfd. 465 F.2d 731, 735 (5th Cir. 1972); *A.M.F. Bowling Co*., 303 NLRB 167, 170 (1991), enf. denied on other grounds 977 F.2d 141 (4th Cir. 1992); *Clemson Bros*., supra; *Coalite, Inc*., 278 NLRB 293, 303 (1986); and *Mary Ann's Bakery*, 267 NLRB 992, 994 (1983).

CONCLUSIONS OF LAW

1. The Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. All shipping and sanitation employees at the Company's Syracuse, New York facility, excluding all office clerical employees, foremen, nonshipping employees, and supervisors as defined in the Act constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times material, the Union has been and is the exclusive collective-bargaining representative of the employees in the unit described above.

5. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act, the Company has engaged and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

6. The Company has been and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act by unilaterally eliminating all unit positions and reassigning unit work to nonunit personnel, without having afforded the Union an opportunity to negotiate and bargain with respect to such matter, by failing and refusing to furnish the Union with requested information which is necessary for, and relevant to, the Union's performance of its function as bargaining representative, and by bypassing the Union and dealing directly with its employees concerning proposed terms and conditions of employment.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Company has committed violations of Section 8(a)(1) and (5) of the Act, I shall recommend that it be required to cease and desist therefrom and from any like or related unlawful conduct. I shall also recommend that the Company be ordered to furnish the Union with the information requested by the Union in its letters of December 10 and January 24, including current information.

The General Counsel has requested a remedial order which would ''fully restore the status quo ante.'' (Br. p. 27.) I take this to mean that the General Counsel is requesting an order which would require restoration of the Company's Syracuse shipping and sanitation operation and a conventional reinstatement and backpay order for the terminated unit employees.

The cases cited by the General Counsel in support of its request (Br. fn. 16) involved the Board's remedy for discriminatory relocation, subcontracting, or abolition of jobs or work. In such cases, the Board has held that it will usually order restoration of the operation in question, and reinstatement of the discriminatorily terminated employees, unless restoration of the status quo would be ''unduly burdensome.'' *Lear Siegler, Inc*., 295 NLRB 857, 861 (1989). The Board however, with Supreme Court approval, has also utilized the same remedial standard where the relocation or other change in operation was effectuated in violation of the employer's bargaining obligation, albeit not alleged as discriminatory conduct. See *Fibreboard Corp*., 138 NLRB 550, 554–555 (1962), affd. 379 U.S. 203, 216 (1964). The Supreme Court's decision in *Fibreboard* was cited as remedial authority by the Board in *Lear Siegler*, supra, and by the Court in *Olivetti USA, Inc. v. NLRB*, supra at 182 fn. 4.

I find that the present case is appropriate for a remedy which would restore the status quo ante, including restoration of the unit operation and a conventional reinstatement and backpay order. Such remedial relief would not unduly burden the Company. The Company's change in operations did not involve any capital expenditure or even transfer of equipment. The Syracuse facility remains open, functioning, and fully capable of handling the same shipping functions which it performed prior to February 11. In sum, the Company did little more than reroute its deliveries destined for the upstate New York area, and reassign functions previously performed by unit employees to other nonunit personnel (shipping employees at Sayre), and drivers, driver-salesmen, store clerks, the former shipping manager, and a cleaning contractor at Syracuse. Restoration of the former Syracuse shipping operation would predictably entail relatively little expense or inconvenience.

As discussed, the Company asserted to the Union, in sum, that it needed to eliminate the unit positions in order to stem heavy financial losses. Whether such was the case and whether elimination of all or some unit positions, or changes in the operation, are warranted are matters which may be discussed or negotiated between the Company and the Union,

once the Company has provided the requested information which will enable the Union to present informed responses to the Company's contract proposal. As indicated, there is a genuine question concerning the relation between the Company's asserted financial losses and the effectuated changes, e.g., in view of the fact that the Company found it necessary to hire additional shipping employees at Sayre in order to perform work previously performed by the unit employees.

Reinstatement for the terminated unit employees, without restoration of the Syracuse unit operation, would not provide an adequate remedy. Absent restoration, there probably would not be positions available at Syracuse for most of the terminated employees. It would be unduly burdensome on the employees to permit the Company to fulfill its reinstatement obligations by offering the employees positions at other facilities outside the Syracuse area, e.g., at Sayre.

I have also taken into consideration the fact that there has been no unreasonable delay in the processing of this case. The events at issue occurred during the past year. Compare *Olivetti USA*, above at 190. With the cooperation of the parties, this litigation has proceeded expeditiously. Hopefully, this will continue. The parties informed me that the Board petitioned for 10(j) injunctive relief in this case. Therefore, the Company was aware at an early stage of the proceedings that the General Counsel was seeking at least a temporary restoration of the Syracuse unit operation.

Therefore, I am recommending that the Company be ordered to restore and resume its Syracuse shipping operation, to offer the terminated unit employees immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings and benefits that they may have suffered from the time of their termination to the date of the Company's offer of reinstatement. Backpay shall be computed in accordance with the formula approved in *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[7] It will also be recommended that the Company be required to preserve and make available to the Board or its agents, on request, payroll and other records to facilitate the computation of backpay due.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[8]

ORDER

The Respondent, Stroehmann Bakeries, Inc., Syracuse, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing or refusing to bargain collectively and in good faith with Bakery, Confectionery and Tobacco Workers Local Union No. 116 as the exclusive collective-bargaining representative of the employees in the appropriate unit by: unilaterally eliminating unit positions, relocating or reassigning unit work to nonunit personnel, or otherwise changing the wages, hours, and other terms and conditions of employment of unit employees, without prior notice to the Union or without affording the Union an opportunity to negotiate and bargain concerning such changes or the effects of such changes; failing or refusing to furnish the Union with information and data which is relevant and necessary to its function as bargaining representative; or bypassing the Union and dealing directly with unit employees concerning their terms and conditions of employment.

(b) Promising employees benefits if they decertify or otherwise withdraw support for the Union.

(c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Restore and resume its Syracuse, New York shipping and sanitation operation, in a manner consistent with the level and manner of operation that existed before the unit positions were eliminated on February 11, 1994; offer Frederick J. Awad, Anthony J. Bradke, Stephen R. Braungart, David A. Cleavenger, Robert L. Donegan, Thomas J. Ford, John J. Gorman, Charles E. Shelley, Thomas E. Stack, and John E. Stapleton immediate and full reinstatement to their former jobs or, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole for any loss of earnings and benefits they may have suffered from the time of their termination to the date of Respondent's offer of reinstatement, as set forth in the remedy section of this decision.

(b) Promptly furnish the Union with the information requested by its letters of December 10, 1993, and January 24, 1994, including current information.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its Syracuse, New York facility copies of the attached notice marked ''Appendix.''[9] Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[7] Under *New Horizons*, interest on and after January 1, 1987, is computed at the ''short-term Federal rate'' for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621.

[8] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[9] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we have violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse to bargain collectively and in good faith with Bakery, Confectionery and Tobacco Workers Local Union No. 116 as the exclusive collective-bargaining representative of the employees in the appropriate unit by: unilaterally eliminating unit positions, relocating or reassigning unit work to nonunit personnel, or otherwise changing the wages, hours, and other terms and conditions of employment of unit employees without prior notice to Local 116 or without affording Local 116 an opportunity to negotiate and bargain concerning such changes or the effects of such changes; failing or refusing to furnish Local 116 with information and data which is relevant and necessary to its function as bargaining representative; or bypassing Local 116 and dealing directly with unit employees concerning their terms and conditions of employment. The appropriate unit is:

> All shipping and sanitation employees at our Syracuse, New York facility, excluding all office clerical employees, foremen, non-shipping employees, and supervisors as defined in the Act.

WE WILL NOT promise you benefits if you decertify or otherwise withdraw support for Local 116.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your right to engage in union or concerted activities, or to refrain therefrom.

WE WILL restore and resume our Syracuse, New York shipping and sanitation operation, in a manner consistent with the level and manner of operation that existed before the unit positions were eliminated on February 11, 1994; WE WILL offer Frederick J. Awad, Anthony J. Bradke, Stephen R. Braungart, David A. Cleavenger, Robert L. Donegan, Thomas J. Ford, John J. Gorman, Charles E. Shelley, Thomas E. Stack, and John E. Stapleton immediate and full reinstatement to their former jobs, or to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole for any loss of earnings and benefits they may have suffered from the time of their termination to the date of our offer of reinstatement, with interest.

WE WILL promptly furnish Local 116 with the information requested by its letters of December 10, 1993, and January 24, 1994, including current information.

STROEHMANN BAKERIES, INC.